

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NORTH CAROLINA (Asheville)

3 No. 1:20-cv-00066-WGY

4
5 CARYN DEVINS STRICKLAND, formerly known as JANE ROE,
6 Plaintiff

7 vs.

8
9 UNITED STATES OF AMERICA, et al,
10 Defendants

11 *****

12
13 For Zoom Hearing Before:
14 Judge William G. Young

15 Status Conference

16
17 United States District Court
18 District of Massachusetts (Boston)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Wednesday, June 21, 2023

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24 REPORTER: RICHARD H. ROMANOW, RPR
25 Official Court Reporter
United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (Begins, 9:30 a.m.)

3 THE CLERK: Now hearing Civil Matter 20-00066,
4 Strickland versus the United States of America.

5 THE COURT: Good morning counsel, thank you for
6 attending on this session of the court. This is a
7 proceeding held on our zoom platform. Our host for this
8 status conference is Courtroom Deputy Clerk, Jennifer
9 Gaudet. The proceedings are taken down by our Official
10 Court Reporter, Rich Romanow. I have law clerks on the
11 line.

12 The proceedings are open to the public. If any
13 members of the public are present, you are certainly
14 welcome, but I remind you to keep your microphone muted
15 and that the rules of court remain in full force and
16 effect, that is to say there is no taping, streaming,
17 rebroadcast, screen shots, or other transcription of
18 these proceedings.

19 With that said, would counsel identify themselves
20 starting with the plaintiff.

21 MR. STRICKLAND: Good morning, your Honor, Cooper
22 Strickland for the plaintiff, who I have present with
23 me.

24 THE COURT: And good morning to you both.

25 MS. STRICKLAND: Good morning.

1 THE COURT: For the defense?

2 MS. McMAHON: Good morning, your Honor, I'm
3 Madeline McMahon from the Department of Justice, and
4 Danielle Wolfson Young from the Department of Justice.

5 THE COURT: And good morning to you.

6 Well I called this status conference to make a
7 suggestion to you and let me tee it up. First of all, I
8 am preparing for the hearing on the cross-motions for
9 summary judgment that is to be held on the 12th and I
10 want to keep that date, but as to -- and I want to thank
11 you, thank you both, both sides, because now, really for
12 the first time in my examination of this case, we've
13 moved beyond allegations to actual evidence and, um,
14 your, in large measure, thorough presentation of your
15 motions and supporting exhibits have been extremely
16 helpful, but I've noticed the following, there isn't too
17 much dispute as to liability, there isn't too much
18 dispute as to what went on here. The issues, the major
19 issues are legal issues, what do we make of it when we
20 examine what went on here? And with that in mind, I
21 offer the following suggestion. And this is not
22 something that I can require and it's not something I
23 need a response from you this morning, although I'm
24 happy to explain, if I do not do so, the ramifications
25 of what I'm suggesting.

1 In the First Circuit, and I know we're not in the
2 First Circuit, we're in the Fourth Circuit, but in the
3 First Circuit we have a procedure and it's fully
4 appropriate, it's called a case-stated procedure, and
5 under the case-stated procedure where the facts are not
6 in dispute and what is in dispute is the legal
7 requirements to be applied to those facts, the judge
8 may, so long as there is not a significant, um,
9 determination of competing views of the facts, the Court
10 may hold a hearing and taking the undisputed facts may
11 rule on the law and determine the case in whole or in
12 part. That procedure holds significant advantages, I've
13 found, to a situation where there are competing motions
14 for summary judgment. And let me explain how I use that
15 procedure because I think it would be helpful here.

16 If we go forward on the 12th and argue the
17 competing motions for summary judgment, under the --
18 under Rule 56 I am required, and I shall, take each
19 motion separately and, um, draw all inferences against
20 the moving party, and that could very well result in --
21 and I'm not -- my mind is completely open here. I am
22 preparing for the hearing, so I am getting myself into
23 the actual evidentiary materials that are before me now,
24 and I will tell you that my mind is completely open. If
25 you think I've got some agenda here, you won't go for

1 what I'm suggesting, but all I can say is I have no
2 agenda at all, I'm trying fairly and impartially to
3 adjudicate the matter in the most efficient and helpful
4 way.

5 So my experience has been that if you have
6 competing motions for summary judgment, not infrequently
7 both motions get denied or a little bit gets decided,
8 but the motions are denied. On the contrary, if you
9 treat it as a case-stated, in essence it is the final
10 argument for so much of the case as can be handled in
11 the case-stated fashion. And procedurally, it works
12 like this.

13 With -- if we go on the cross-motions for summary
14 judgment on the 12th, what I'll do is I'll give you each
15 15 minutes a side to argue, more than likely I'll take
16 the matter under advisement. Recognizing that we have a
17 September trial, I'm sensitive to the defense's motion
18 here, but for the moment we have a September trial. And
19 I'll make my ruling.

20 If we go case-stated, here's the way it will work.
21 I'll give you -- because it's like final argument, I'll
22 give you 40 minutes a side, because it's final
23 argument -- well to be specific, this will only work on
24 liability. Damages, if we get to damages, since the
25 record is not as fully developed, a case-stated won't

1 work as to any damages here. So I'm talking just about
2 the liability determination.

3 So I'll give you 40 minutes to argue. My practice
4 is the plaintiff argues last because the plaintiff bears
5 the burden of proof. I will hear the arguments, take
6 the matter under advisement. Under Rule 52 then, I am
7 obliged to write an opinion, a full opinion as to
8 liability with findings of fact and rulings of law.
9 There are two possible outcomes, either the plaintiff
10 wins and we schedule a hearing on damages or the
11 plaintiff loses and judgment enters for the defendant.

12 Because it seems to me the facts are largely
13 undisputed, and I want to get to two areas where clearly
14 there are disputes, and it's either -- well let me get
15 to those areas right now.

16 It seems that the facts on liability are
17 undisputed. In one respect I find a dispute, a factual
18 dispute between what Ms. Strickland says the Judicial
19 Integrity Officer said to her and what the Judicial
20 Integrity Officer says was said to her. I've got no
21 idea whether that factual dispute is dispositive, but
22 it's a factual dispute, and if we did it on a
23 case-stated, I'm not in a position to resolve that
24 factual dispute because I haven't heard the testimony
25 and the like.

1 I will tell you how I analyze it. As to that I
2 would say, "Well" -- once I found everything else that
3 isn't in dispute, I'd say "Well suppose Ms. Strickland
4 is right, does it change anything?" And then I would
5 figure that out and I would go on to assume the
6 contrary, I would say, "Well suppose the government's
7 version of what the Judicial Integrity Officer said is
8 right, does that change anything?"

9 Now if the answer to both those questions are
10 "No," I can go ahead and resolve the case. If the
11 answer to either of those questions is "Yes," that
12 that's a dispositive dispute, well we're going to have
13 to have an evidentiary hearing, but it's much shorter
14 and it focuses on that particular dispute.

15 The other aspect of the evidentiary record that I
16 have before me that quite candidly I'm not clear whether
17 it's in dispute or not, I've got this, um, tape and,
18 um -- well I've gotten into it, but quite candidly I
19 don't know what it is, I don't know who's talking, I
20 don't know what the setting is. Now I suppose that can
21 all be explained to me at the time of argument, whether
22 the argument's going to be on cross-motions for summary
23 judgment or on the case-stated, but, um, I really do
24 want to be candid. My statement about it seems to me
25 that everything is undisputed, I've identified the one

1 dispute, and then this tape. I don't know what to make
2 of this tape, I don't know whether it's peripheral,
3 whether it's central? And you people, not this morning,
4 but you people are going to have to explain that to me
5 at an appropriate time.

6 So there's my proposal. If we went for that, um
7 -- again I see various advantages to that. You've got
8 to trust me that I haven't got an agenda here, I'm just
9 talking about procedurally how we might address the
10 case. I have no opinion whatsoever as to the outcome.
11 I look forward to the argument, whether it's
12 cross-motions or case-stated.

13 It's not -- I don't want you to jump now, but I do
14 want you to confer among yourselves. If I have missed
15 some, what the parties think are truly central factual
16 disputes, um, feel free to bring them to my attention.
17 And then I want you to give Ms. Gaudet a heads-up as to
18 -- in sufficient time before the 12th, as to how we're
19 going to proceed. Whether you agree to case-stated, in
20 which case we're going to take an hour and 20 minutes
21 for final argument as to liability, or whether we're
22 going to do this as cross-motions for summary judgment,
23 in which case we'll take a half an hour to argue the two
24 motions for summary judgment.

25 Now that's my suggestion. I'm through. This is

1 not the time for argument, but I am certainly open to
2 questions. I want you to be very clear what I'm
3 proposing.

4 We'll start with the plaintiff. Questions?

5 MR. STRICKLAND: Thank you, your Honor.

6 I'm familiar with your use of this practice and
7 I -- at this moment I don't have any specific questions.
8 If maybe I can mute my microphone and turn off my
9 camera, I'll confer with my client and come right back
10 and ask any, but --

11 THE COURT: Before you do that, let's see what the
12 defense has in the way of questions and then you go
13 right ahead and do that and we'll stand by. But let's
14 first see the defense.

15 Questions from the defense?

16 MS. McMAHON: Your Honor, just to clarify
17 something. We have seen on the docket that the motion
18 for summary judgment hearing was scheduled for July
19 10th, not July 12th.

20 THE COURT: I misspoke. I misspoke.

21 MS. McMAHON: No problem.

22 THE COURT: I work for Ms. Gaudet. If it says the
23 10th, it's the 10th.

24 MS. McMAHON: And to follow up on that, just to be
25 clear, if we agree -- if the parties agree to a

1 case-stated, we would convert the summary judgment
2 hearing to the case-stated, is that right?

3 THE COURT: Exactly.

4 MS. McMAHON: Got it.

5 So just to clarify as well, we wouldn't be -- the
6 case-stated hearing would just be argument, is that
7 right, there would be no fact witnesses whatsoever?

8 THE COURT: Correct, because the theory of it is
9 that the facts are in such significant measure
10 undisputed that the -- I'm not going to be drawing
11 inferences against each moving party. To the extent I
12 draw inferences, I'm permitted to draw reasonable
13 inferences from undisputed facts, and then I must apply
14 the law.

15 MS. McMAHON: So would -- in terms of the evidence
16 that's before you, um, would that have been confined to
17 what we've attached to our motion for summary judgment
18 or would we have the opportunity to put additional
19 evidence into the record to the extent you think it's
20 relevant?

21 THE COURT: Excellent question. I had thought it
22 would be confined to the exhibits to the motions for
23 summary judgment. If you went for the case-stated route
24 and you thought there was additional -- again we're just
25 talking liability here, there was additional evidence

1 that you wanted to proffer on liability, we'd have to
2 work out a schedule -- we might have to slip the date of
3 the 10th, work out a schedule to get that evidence
4 before me, and of course this won't work if the evidence
5 is disputed by the other side and it is significant
6 evidence.

7 Am I making sense?

8 MS. MCMAHON: Yes, that makes sense.

9 One thing, at least at the top of our mind, is
10 that, um, per the Court's ruling we're planning to
11 reopen the plaintiff's deposition, which is something we
12 haven't been able to do since we've been --

13 THE COURT: I have that in mind, but we've got
14 to -- I'm trying to move the thing along. Remember, um,
15 there is both a private interest here on the part of
16 Ms. Strickland, as she wants to win this case, and, um,
17 if we get to damages, her damages are going to be
18 affected by the time that we take to adjudicate it. And
19 also there is an appropriate public interest in
20 resolving this matter. And I'm -- and I've said
21 throughout, I'm sensitive to that.

22 So, um, I actually think -- well I don't want to
23 get into the weeds of what's going to be discovered in
24 this further discovery, but the further discovery that
25 I've permitted is, um, the Chief Judge. We already know

1 what the Circuit Executive says happened at that
2 meeting, so fine, they can have that deposition. Then
3 you're complaining about four last-minute witnesses and
4 I say "Fine, you can look at those witnesses." But in
5 candor my guess is -- again I don't know, whatever they
6 have to say is peripheral.

7 And then there's this business about reopening
8 Ms. Strickland's deposition. Well I read that and made
9 my rulings with care, but it seems to me that whatever
10 you're going to discover in the two additional hours
11 largely goes to liability. Now this is not the time to
12 argue, but I'm trying to be transparent. Not -- it goes
13 to damages, excuse me, I misspoke again, it goes to
14 damages and the right to obtain damages. That's not
15 what I'm taking up here, but I can see how you would
16 think of that as liability.

17 I look at this as follows. The mandate from the
18 Fourth Circuit has instructed me that if the allegations
19 of the complaint are sustained, then Ms. Strickland is
20 entitled to recover front pay, and I -- it goes without
21 saying, I fully accept that, I intend to vindicate that
22 opinion and test the evidence against that opinion. So
23 now I understand -- having looked at the evidence here,
24 I understand the theory much more than I did. I
25 understand that she's claiming deliberate indifference

1 to a sexual harassment claim, she's claiming her due
2 process and equal protection rights have been violated.
3 Now whatever one may say about that Fourth Circuit
4 opinion, it's a significant development in the law and
5 I'm going to treat it as such. And I must, um, work out
6 the contours of that, um, with your aid. And I'm saying
7 I'm very favorably impressed by both sides's motions for
8 summary judgment and the exhibits, and I'm working with
9 it, I'm getting ready for the hearing.

10 It seems that what you want to get into is a
11 possible bar to damages and, um, I don't know as that
12 that's what we should deal with -- actually your
13 question is a very good one and it reveals I haven't
14 thought this through to that extent. I don't know as we
15 want to get into that in what I contemplate as the case-
16 stated portion here. Again I see it as writing an
17 opinion that either comes out that in some respect, in
18 those theories I just mentioned, her rights were not, by
19 the conduct of the government, as we will call it, not
20 significantly respected and the government is therefore
21 liable, or writing an opinion that in one or another
22 respects the evidence just doesn't support it,
23 notwithstanding the significance of the Fourth Circuit's
24 opinion.

25 So, um, I guess to directly answer your question,

1 yes, you're entitled to reopen the deposition and to
2 ascertain those things which I don't think are
3 privileged and, um, with the possible exceptions that
4 exist in my order, but I would not encompass them in the
5 case-stated if we go case-stated.

6 Does that answer your question?

7 MS. McMAHON: It does, your Honor. Thank you.

8 THE COURT: Yes. Okay. So let me make that
9 clear. And that was a very good question because the
10 contours are liability given the issues raised in the
11 Fourth Circuit's decision, which it's my duty to
12 implement.

13 Okay, Mr. Strickland, why don't you mute yourself,
14 go off camera, and we will stand by for a reasonable
15 period of time to see if you have questions.

16 MR. STRICKLAND: Thank you. We'll just take a few
17 minutes.

18 THE COURT: Thank you.

19 (Pause.)

20 MR. STRICKLAND: Thank you, your Honor.

21 Just to clarify a point. We will still be able to
22 file a reply to the summary judgment motions?

23 THE COURT: Oh, yes.

24 MR. STRICKLAND: Okay. And, um, in that case I
25 think that, um, what you have kind of mapped out makes a

1 lot of sense as far as the way you view the record, and
2 I think that if we could just have -- it's a significant
3 decision --

4 THE COURT: I recognize that, that's why I wanted
5 to take time to explain it in detail.

6 MR. STRICKLAND: And so from my perspective
7 though, if we were still following the reply and
8 argument, it's still going to be on the 10th, but it's
9 going to be expanded to 40 minutes, we kind of need to
10 know sooner than later so that we can prepare for that
11 eventuality. And what I would suggest is that I think
12 we would be prepared to, um, let your Courtroom Deputy
13 know by the end of the day our position.

14 THE COURT: Well how about by the end of the week?
15 Well the government, maybe the government can agree or
16 not agree by the end of the day. You both have to
17 agree.

18 How does the government feel?

19 MS. McMAHON: I think this is something that we
20 would need to discuss with our client. So at this point
21 --

22 THE COURT: End of the week?

23 Ms. McMAHON: Yeah, end of the week I think makes
24 sense.

25 THE COURT: Because Mr. Strickland's point is a

1 good one, you want to know what you're preparing for.
2 So by the end of the week you'll tell Ms. Gaudet. Both
3 will have to agree because this is a procedure that can
4 only work by agreement.

5 All right. Any other questions, Mr. Strickland?
6 Because there's one other thing I want to say, just so
7 the record is clear.

8 MR. STRICKLAND: The only other question I have
9 is, um would you like courtesy copies of the response
10 and the reply just the same as the opening brief?

11 THE COURT: I think we would.

12 MR. STRICKLAND: Okay, we'll get those in the
13 mail.

14 THE COURT: Thank you.

15 All right. If there are no other questions, I
16 simply want to put on the record something because there
17 is a sensitivity.

18 I recognize now that the United States is the
19 defendant and the Department of Justice is defending
20 the, um, federal employees of the judicial branch and
21 the judicial officers in their official capacities and
22 the United States is the defendant, but I want to state
23 to you, simply because in the interests of transparency,
24 that since the case has been remanded to me for further
25 proceedings, I have had three completely innocuous, in

1 my view, interactions with the Director of the
2 Administrative Office of the United States Judicial
3 Conference who early on in this case was a named
4 defendant, the Honorable Roslynn Mauskopf, and so I
5 state what those interactions were.

6 First, the government of Japan has awarded me a
7 medal for my working with Japanese judges who are on
8 sabbatical and studying here in Boston and, um, under
9 the regulations it's appropriate for me to accept this
10 medal, if has no intrinsic value so long as I report it
11 and of course I have. But in order to retain it for
12 display in these chambers, I need the permission of the
13 Director of the Administrative Office. I wrote her a
14 formal letter and she wrote me a formal response
15 granting that permission. That's one.

16 Also, I have -- I yearly, and I have since 2009,
17 prepare an internal -- it's completely unofficial, but
18 I'm responsible for it, an internal document within the
19 judiciary which I entitle "America's Most Productive
20 Federal District Courts." I did so and I send copies to
21 the Chief Judges of the courts who are the most
22 productive and also a copy to Judge Mauskopf, as she is
23 the Director, and to John Cook, the Director of the
24 Federal Judicial Center for Education, and I've done so.
25 I mean no disrespect, but she didn't respond or

1 acknowledge it.

2 Third, last month there was the Judicial
3 Conference of the First Circuit which I attended and
4 Judge Mauskopf spoke at that conference and, um, one
5 thing she said was that "The true home of the judge is
6 the courthouse." I am one who is very much in favor of
7 that view of the role of the judicial officer. And
8 afterwards I went up and introduced myself to her, we've
9 never met, and, um, identified myself as the author of
10 "America's Most Productive." She said, um, that she
11 thanked me for it, expressed that she was sorry she
12 didn't respond, and I said not to worry about it, she's
13 busy, and she further said how much she favored the
14 proposition that judges be out on the bench, and as that
15 is something I've written about extensively, I thanked
16 her for that. The whole interaction was less than 3
17 minutes.

18 These have nothing to do with the case at all.
19 I've assiduously avoided anything that even remotely
20 might bear on this particular case. But there have been
21 those three interactions and I place them on the record.

22 All right. I look forward then to hearing you one
23 way or the other. And I will say, this is not
24 something -- I'm offering this as, um, a fair and
25 impartial way to move forward on this case. If one of

1 you wants it and one of you don't, don't think that's
2 going to rebound against anyone, Ms. Gaudet is
3 instructed to tell me only that both parties agree or
4 that the parties don't agree. If you don't agree, we'll
5 hear it as cross-motions for summary judgment.

6 So I think we're ready to recess and we'll stand
7 in recess. Thank you.

8 (Ends, 9:30 a.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Wednesday, June 21,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 09-19-23

RICHARD H. ROMANOW Date